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BSH HOME APPLIANCES CORPORATION
INTELLECTUAL PROPERTY DEPARTMENT
100 BOSCH BOULEVARD
NEW BERN, NC 28562

EXAMINER	
WALDBAUM, SAMUEL A	

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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application Number: 10/583,949
Filing Date: March 29, 2007
Appellant(s): ROSENBAUER ET AL.

James Howard Reg. No. 39,715
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed April 6, 2009 appealing from the Office action mailed October 28, 2008.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is substantially correct. The changes are as follows: that the patent number for the Oyler et al is U.S. pgpub. 2003/0205954.

WITHDRAWN REJECTIONS

The following grounds of rejection are not presented for review on appeal because they have been withdrawn by the examiner. The rejection claims 21 and 22 under Oyler et al in view of Brueggemann.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

20030205954	Oyler et al	11-2003
20010016886	Kavanuaugh et al	8-2001
5995877	Brueggemann et al	11-1999
2791050	Neugass	5-1957
2660834	Neugass	12-1953
20040109096	Anderson et al	6-2004

www.dictionary.com - definition of matt

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 11 and 13 rejected under 35 U.S.C. 102(b) as being anticipated by Oyler et al (U.S. pgpub. 2003/0205954, hereafter `954).

2. Claim 11: `954 teaches a dishwasher with a container (fig. 1, part 104) with a control panel allowing the user to select multiple features and displaying that information to the user ([0025]) with a touch sensitive buttons for selecting user options ([0025]). `954 teaches that the

controller is operated by the touch of a user ([0025]) which is a relative light touch when compared to say when touching the controller with a hammer.

3. Claim 13: `954 teaches a plurality of touch sensitive buttons for user selection of desired feature ([0025]). Claims directed to apparatus must be distinguished form prior art in terms of structure rather than function. *In re Danly*, 263 F.2d 844, 847, 120 USPQ 528, 531 (CCPA). "[A]pparatus claims cover what a devices is not what a device does" *Hewlett-Packard Co. v. Bausch & Lomb Inc.*, 909 F.2d 1464, 1469, 15 USPQ2d 1525, 1528 (Fed. Cir. 1990).

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

5. The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 12 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Oyler et al (U.S. pgpub. 2003/0205954) as applied to claim 11 above further in view of Kavanaugh et al (U.S. pgpub 2001/0016886, hereafter `886).

`954 teaches all the elements of claim 11 above.

6. Claims 12 and 26: `954 teaches that the touch control panel can have a electrical scheme ([0025]). `886 is solving the same problem as the applicant of applying a touch controller to an electronic device. `886 teaches that a non-pressure sensitive touch sensitive device that relies on electromagnetic induction (hence a electromagnetic field) to determine the user function selections ([0088]). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have use a touch controller as taught by `886 as the touch sensitive controller in apparatus `954 to have yield the predictable result of controlling the user selected functions as the user touches the controller.

Claims 14 17-20, 23-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Oyler et al (U.S. pgpub. 2003/0205954) as applied to claim 11 above further in view of Brueggemann et al (U.S. 5,995,877, hereafter `877).

`954 teaches all the elements of claim 11 above.

7. Claim 14: `954 is not explicit on the detail design of the touch sensitive controller. `877 is a control panel for a dishwasher (col. 1, lines 5-15). `877 teaches that the touch sensitive surface is a flat surface (figs. 2a and 2b). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have used a flat touch sensitive portion as taught by `877 in apparatus `954 to have facility a flat surface for the user to touch to activate the selected function. `954 teaches that the control panel (part 166) is in substantially the same plane of the door in which is located (fig. 2).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to placed the control panel in the same plane of the surface it is located on,

since it has been held that rearranging parts of an invention involves only routine skill in the art. In re Japikse, 86 USPQ 70.

8. Claims 17 and 23: `877 teaches that a printed film (part 5, col. 3, lines 1-15) is used to indicate the functions of the buttons (col. 3, lines 1-15). `877 teaches that the film is located behind the touch surface (col. 3, lines 1-15) but also that the touch surface is transparent (col. 3, lines 1-67). It would have been obvious to one having ordinary skill in the art at the time the invention was made to have placed the printed film on part of the surface to indicate the function on each button, since it has been held that rearranging parts of an invention involves only routine skill in the art. In re Japikse, 86 USPQ 70.

`877 is silent as to what material the film is composed of. `877 further teaches that metal can have symbols printed on them for the functions of the buttons (col. 6, lines 20-30). The selection of something based on its known suitability for its intended use has been held to support a *prima facie* case of obviousness. *Sinclair & Carroll Co. v. Interchemical Corp.,* 325 U.S. 327, 65 USPQ 297 (1945). It would have been obvious to one ordinary skill in the art at the time the invention was made that the print film with function indicators of apparatus `954 in view of `877 can be made of a metallic material.

9. Claims 18, 19 and 24: `877 teaches that the control panel is controllably illuminated only by lights in steps (col. 3 line 1-col. 4 line 45).

10. Claims 20 and 25: `877 teaches that a number of LEDs of different colors are used to illuminate the surface of the panel (col. 4, lines 15-50).

Claims 15 and 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over Oyler et al (U.S. pgpub. 2003/0205954) as applied to claim 11 above further in view of Brueggemann

et al (U.S. 5,995,877) and Neugass (U.S. 2,791,050, hereafter `050) as evidence by a definition of matt surface provided by www.dictionary.com.

`954 teaches all the elements of claim 11 above.

11. Claims 15 and 21: `954 is silent about the characteristics of the viewing surface of the control panel. `877 teaches that the viewing surface is transparent (col. 3, lines 1-67), allowing for signal indicators to be seen through the surface (col. 3, lines 1-67). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have used a transparent surface as taught by `877 as the touch surface in the control panel of apparatus `954 to have allowed signal indicators to been seen through the surface.

`954 in view of `877 does not teach that a matt material is used. Dictionary.com was used to determine the definition of "matt material" which is short for matte material which means lack of luster or gloss. `050 is a control panel. `050 teaches that a matte material finish is used in the control panel to diminish glare (col. 1, lines 15-25). It would have been obvious to one of ordinary skill in the art at the time invention was made to have finished the control panel surface with a matte material as taught by `050 in apparatus `954 in view of `877 to have cut down glare on the surface of the control panel.

Claims 16 and 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over Oyler et al (U.S. pgpub. 2003/0205954) as applied to claim 11 above further in view of Anderson et al (U.S. pgpub 2004/0109096, hereafter `096) and Neugass (U.S. 2,660,824, hereafter `824).

`954 teaches all the elements of claim 11 above.

12. Claims 16 and 22: `954 does not teach that transparent plastic film covers the touch sensitive surface. `096 is an overlay for a control panel. `096 teaches that a thin plastic films

can overlay a control surface ([0032]) to reduces smudges on the control surface ([0032]). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have used a thin plastic overlay as taught by `954 to cover the touch sensitive control surface of apparatus `954 to reduce smudging on the control surface.

`954 in view `096 does not teach that thin plastic films can be transparent. `824 is a control panel. `824 teaches that thin plastic films of plastic can be transparent to allow the transmission of light through the plastic (col. 3, lines 10-15). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have made the plastic transparent as taught by `824 for the overlay of the control panel of apparatus `954 in view of `096 to have allowed the transmission of light through the plastic overlay.

Claims 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Oyler et al (U.S. pgpub. 2003/0205954) in view of Kavanaugh et al (U.S. pgpub 2001/0016886) as applied to claim 16 above further in view Brueggemann et al (U.S. 5,995,877).

`954 and `886 teaches all the elements of claim 26 above.

13. Claim 27: See claim 18, 19, and 24 above.

(10) Response to Argument

14. Argument A:

15. Applicant is arguing that the prior art does not teach a relative light touch controller. The prior art teaches that the controller is touched by the user to activated the options of the controller which is a "relatively light" touch when compared to touching the controller with, for example, a hammer.

16. Argument B:

17. In response to applicant's argument that Kavanaugh is nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, Kavanaugh is reasonably pertinent to a particular problem with which the applicant was concerned, specifically providing a touch controller for an electronic apparatus.

18. Argument C:

19. See argument A for relative light touching.

20. Applicant argues that the limitations of claim 12, are not taught by the Oyler in view of Brueggemann. However claims 14, 17-20, 23-25 do not depend from claim 12, thus they do not require the limitations of claim 12. Therefore applicant's arguments are moot to this point.

21. Applicant is arguing that the prior art does not teach the controller is illuminated in steps. The Brueggemann (5,995,877, hereafter `877) teach lighting up the controller in steps (col. 3, lines 4-12, col. 3, lines 50-55 and col. 4, lines 30-45) which details that lights behind the switches are individually operated and turned on/off at different points during operations. Thus the art teach illuminating the controller in steps.

22. Argument D:

23. See argument A for relative light touching.

24. Argument E:

25. See argument A for relative light touching.

26. Argument F:

27. In response to applicant's argument that Brueggemann is nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, Brueggman is in the field of applicant's endeavor, that is, a touch controller for a dishwasher (col. 1, lines 5-10).

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Samuel A Waldbaum/

Examiner, Art Unit 1792

Conferees:

/Michael Cleveland/

Supervisory Patent Examiner, Art Unit 1792

/Jennifer Michener/

QAS, TC1700